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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,595	03/22/2004	Jeffrey H. Brink	4621-2	2450

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EXAMINER	
HALE, GLORIA M	
ART UNIT	**PAPER NUMBER**
3765	

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/806,595	BRINK, JEFFREY H.
	Examiner	Art Unit
	Gloria Hale	3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-26 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) 14-19 is/are allowed.

6)☒ Claim(s) 1-10,12,13 is/are rejected.

7)☒ Claim(s) 11 is/are objected to.

8)☒ Claim(s) 23-26 are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 3-22-04 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 6-7-04.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-22, drawn to a garment, classified in class 2, subclass 69.

II. Claims 23-26, drawn to a fob connector, classified in class 24.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a connector on other items and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are

shown to be separately usable. In the instant case, invention II has separate utility such as a connector on other items. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group I, restriction for examination purposes as indicated is proper.

A telephone call was made to Mark Yaskanin on 9-2-04 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

The Examiner has examined the majority of the claims 1-22 relating to a garment which is in the Examiner's Classification area in order to expedite examination.

The use of the trademark VIAGRA has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1,4-8, 10, 12 and 13 are rejected under 35 U.S.C. 102(a) as being anticipated by the Candy G-string described in the Playboy Article and at www.jeweledgs.com (Applicant's references numbered 22 and 23).

their use in any manner which might adversely affect their validity as trademarks. The edible G-string underwear seen at www.jeweledgs.com and as in applicant's references 22 and 23 discloses an assembly including a garment with at least one structural supporting element, straps, that is at least partially detachably interconnect able with another garment component, the front panel strap end wherein it is partially detachably connected by a ring that is openable by pulling on the ring and separating the separation and then bending the ring apart to detach the strap in addition to the plurality of apertured candies threaded on the g-string straps. (See www.jeweledgs.com- candy g-string as seen in applicant's references 22 and 23). The fabric garment and straps are washable, dryable and reusable as broadly claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over The Jeweled G's Candy G-string (applicant's ref. # 22 and 23) in view of Countee,Jr. (US 5,093935).

The g-string of the www.jeweledgs.com candy g-string discloses the invention substantially as claimed except for a pocket on the front panel. Countee, Jr. discloses a panty/underwear 40 with a pocket thereon with opening 24 as seen in figure 4 to hold any items as desired such as condoms. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the candy g-string to attach a pocket to the front panel to hold any items desired by a wearer and which is able to hold candy items as desired. (See Countee, Jr. fig. 4, col. 2, lines 44-62).

Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Jeweled G's Candy G-String (as seen in Applicant's ref. #22 and 23).

The Candy G-string discloses the candy undergarment substantially as claimed. However, it does not specifically disclose the candies as being in the claimed shapes. The claimed candy shapes are well known candy shapes and it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the candy shape as a design expedient that would have been within the skill of one of ordinary skill in the art and which would only be limited by the imagination of the user/creator. Also any kind of string such as cotton, silk or synthetic materials would

have also been within the ordinary skill of those skilled in the art as a basic selection of known materials in order to achieve a desired strength or aesthetic value obtainable by such known materials.

Claims 1,4-8, 19,12,13 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brancato (US 6,279,171) and the Common Knowledge of the existence and sale of Candy Bead Necklaces.

Brancato discloses a garment having at least one structural support element, the straps which are at least partially detachably interconnect able with another garment component, the bra cups. Brancato discloses the straps as being formed of beads, pearls 110 (See Brancato, figures 2,4,11 and col. 2, lines 45-60 and col. 3, lines 16-25) and that they can be formed of "any other suitable materials in various designs, shapes and /or colors and any combinations thereof regardless of cost". It is well known that candy necklaces have been made and sold for at least 30 years which include candies having apertures strung on a string or thread. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the bra straps of Brancato to string any apertured bead-like item such as candies to achieve a desired aesthetic effect and end-use, such as having edible candy available , wherein the substitution the beads is suggested by Brancato as discussed above. (See information in regard to well known candy necklaces at www.nostalgiccandy.com and www.candyfavorites.com. It is well known that candies come in any of the claimed shapes and creating beads in those shapes would be within the skill of one of ordinary

skill in the art at the time the invention was made as a design expedient to achieve a desired aesthetic effect. In further regard to claims 20-22 the Brancato straps with the detachable connector are easily attachable and detachable wherein the first and second straps can interconnect both cups together by each extending around the neck of the wearer in a halter configuration that does not attach to the back strap. The candy beaded configuration is the same as discussed above. (Strap configuration partially shown in figure 9 and col. 10, lines 8-28).

Claim 2 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Brancato (US 6,279,171) and the Common Knowledge of the existence and sale of Candy Bead Necklaces and further in view of Lee (US 2,624,881).

Brancato and the common knowledge of strung candy beads discloses the invention substantially as claimed. However, they do not disclose the bra as including a pocket. Lee discloses a bra with a pocket on a front panel (23) to hold any items as desired which could include candy as desired. (See fig. 1).

Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brancato US 6,279,171) and the Common Knowledge of the existence and sale of Candy Bead Necklaces which discloses the candy undergarment substantially as claimed. However, it does not specifically disclose the candies as being in the claimed shapes. The claimed candy shapes are well known candy shapes and it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the candy shape as a design expedient that would have been within the skill of one of ordinary skill in the art and which would only be limited by the imagination of

the user/creator. Also any kind of string such as cotton, silk or synthetic materials would have also been within the ordinary skill of those skilled in the art as a basic selection of known materials in order to achieve a desired strength or aesthetic value obtainable by those materials.

Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 14-19 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.
In regard to claim 11 none of the cited references alone or in combination disclose the wrapper inside of the apertures as claimed. Also not disclosed is a garment with a crotch portion and the strap configuration consisting essentially of the length and looped end portions structured as claimed in claim 14. Nor is a garment with a crotch portion and front and rear panels each with left and right straps with edible items thereon for connection as claimed in claims 15 and the retention fittings of claims 16-19.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 703-308-1282. The examiner can normally be reached on Tuesday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gloria Hale
Primary Examiner
Art Unit 3765

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